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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

JAN 11 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Section 8 of the)
Cable Television Consumer Protection)
and Competition Act of 1992)

MM Docket No. 92-263 ✓

Consumer Protection and Customer)
Service)

To: The Commission

COMMENTS OF MGB ASSOCIATES, INC.

MGB Associates, Inc. (MGB) herewith offers its Comments in connection with *Consumer Protection and Customer Service*. MGB, organized and incorporated in April, 1992, is a cable television consulting firm to political subdivisions and to cable systems in connection with the franchising, renewal of franchises and regulation of cable television systems.¹

¹ MGB approaches local cable regulatory matters from the technical, legal, financial, and perceptual research perspectives. It operates as an umbrella in the multidiscipline representation of its clients in legislative drafting and enactment, franchise negotiations and administrative hearings. Legal services are provided through Midlen & Guillot, Chartered, Washington, D. C.; technical assistance and evaluation through World Media, Inc., Forest (Lynchburg), Virginia; financial evaluation and auditing through a Big Six accounting firm; and survey and other performance evaluation through a statistical research company (continued...)

Accordingly, it is intensely interested in the development of customer service -- an area that, for different reasons, is, or should be, of especially critical importance to both franchisor and franchisee.

Preemption. Clearly the Federal Standards must preempt franchise authorities from adopting cable customer service standards inferior to those adopted in this proceeding. Congress has clearly contemplated, and mandated, that the Commission install a floor in terms of minimum service -- and it has done so in response to an outcry from the public. For the Commission to assume any posture other than that its customer service standards establish a level below which cable systems may not sink (without waiver) would be to gut the standards' effectiveness. Moreover, one of the principal benefits of the doctrine of federal preemption is that a patchwork of local legislative efforts is avoided, including, in particular, gaps where franchising authorities simply fail to act. Inconsistent rights and responsibilities is the antithesis of preemption and must be avoided,² for the benefit of system operator, franchisor and cable customer, alike.

¹(...continued)
and/or World Media, Inc.

² E.g., *Exclusive Jurisdiction With Respect to Potential Violations of the Lowest Unit Charge Requirements of Section 315(b) of the Communications Act of 1934, as amended*, 7 FCC Rcd 4123, 4125 (1992) (and cases cited therein).

Self-execution. It would appear that the Commission's standards will be self-executing, just as are its other adopted rules. MGB would expect that the Commission's Customer Service rules will go into effect thirty days after publication in the Federal Register -- like the vast majority of its regulations.

NCTA Standards. MGB supports adoption of the NCTA Standards, with two minor modifications. First, standard cable service installation should be available within three business days on a mature segment of any cable system. To initiate service to customers within seven business days as is contemplated in the NCTA Standards, is reasonable when, and only when, a new geographic area of cable service is opened. Otherwise, service should be available much more promptly. Second, appointment windows should be "(a) morning, (b) afternoon or (c) early evening." An "all day" appointment window is extremely frustrating to the customer who has stayed home since, say, 8:00 a.m. until the service person's arrival at 4:30 p.m. As a matter of sound business practice, cable television systems can do better than that, and they should. By specifying an "early evening" appointment window, MGB does not mean to suggest that all cable systems must offer same -- only that those who do will find it beneficial in terms of customer relations. Implementing regulations should make clear that the cable system can offer no less than morning or afternoon appointment windows and that an "early evening"

appointment window is supplemental thereto.

The NCTA Standards have developed from good, common sense business practices and are not viewed by either the cable industry or by franchising authorities as overly burdensome to any cable operation, regardless of size. A cable system franchisee, like a broadcast station licensee, should develop business practices that allow it to function in the public interest. Indeed, to the extent that some aberrant cable systems need to be prodded is hardly an indictment of the NCTA Standards themselves. Rather, when the voluntariness thereof is replaced with the mandatoriness of federal regulations, cable service will improve dramatically in those systems where improvement is needed. In MGB's experience those systems are few and far between and are an embarrassment to the industry.

Waiver. It is elementary law that administrative agencies may not waive statutory requirements,³ but may waive regulatory requirements. Indeed, in appropriate situations the Commission is obligated to grant waivers of its rules. In any circumstance where the minimalist federal standards can not be met, a waiver request should be given a "hard look," just as must be done with respect to any other meritorious

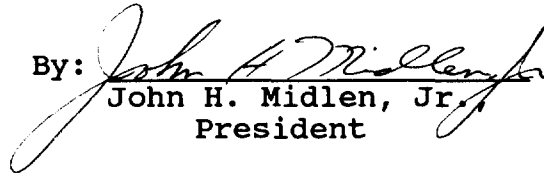
³ C & S Broadcasting Corp. (WLCT(TV)), Mimeo No. 3415 at 3 (Video Svs. Div. 1985), citing, *Gardner v. FCC*, 530 F.2d 1086 (D.C. Cir. 1976).

waiver request.⁴ This, obviously, on a case by case basis.

Respectfully submitted,

MGB ASSOCIATES, INC.

By:


John H. Midlen, Jr.,
President

3238 Prospect Street, N.W.
Washington, D. C. 20007
202-333-1500

236 Ivy Lake Drive
Forest, Virginia 24551
804-525-0900

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⁴ WAIT Radio v. FCC, 418 F.2d 1153, 1156 (D.C. Cir. 1960).